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EUROCLEAR S.A./N.V.
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B-1210 BRUSSELS, BELGIUM

Commission consultation on Transparency Directive

Euroclear response

We are pleased to be given the opportunity to offer Euroclear's¹ views on the Commission's consultation on the Transparency Directive. Euroclear is registered on the European Commission's register of interest representatives - ID number 88290282308-75.

As a provider of securities safekeeping services, Euroclear supports investors (and their intermediaries) and issuers in the domain of corporate action information provision and processing. In a number of Member States (France, Netherlands, UK, Ireland, Sweden and Finland), we offer services that ease the exercise of voting rights and that support issuers in the identification of their shareholders (Sweden, Finland and France).

As market infrastructure service provider, we are supportive of measures that increase efficiency of financial markets, specifically in an EU cross-border environment. Harmonisation of market practices and EU legislation is of crucial importance in rendering management of cross-border securities holdings as efficient as management of domestic holdings. In this respect, we support proposals that would set up a uniform EU regime for the notification of major holdings of voting rights as indicated in question 19.

Our response to the Commission consultation focuses on two specific issues: the issue of empty voting (questions 13 and 14) and of shareholder identification. On the latter, we recognise this topic does not form part of the consultation but we believe it merits some special attention in view of the work ongoing in the preparation for T2S.

¹ The Euroclear group is the world's leading provider of domestic and cross-border settlement and related services for bond, equity, fund and derivative transactions. User owned and user governed, the group comprises the international central securities depository Euroclear Bank, based in Brussels, as well as the national central securities depositories (CSDs) Euroclear Belgium, Euroclear France, Euroclear Nederland, Euroclear UK & Ireland and NCSD, the CSD for Finland and Sweden. Euroclear also owns EMXCo, the UK's leading provider of investment-fund order routing, and Xtrakter, which operates the TRAX trade matching system.



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Empty voting (questions 13 and 14)

We fully understand the concerns raised about empty voting, and the need to find an appropriate solution to avoid empty voting caused by “record date capture”. This concern explains why some Member States have put in place very late record dates, e.g. in the UK 2 days or in France 3 days before the AGM.

For practical, operational reasons, we believe that it could be very challenging to put in place a generalised mechanism of disclosure. Before policy makers would decide that such disclosure is the best solution, it seems necessary to proceed to a cost/benefit analysis with all stakeholders (intermediaries, CSDs, issuers and their agents). It is clear that such disclosure would only make economic sense if a number of operational processes (e.g. record date, pre-AGM registration process) would be harmonised at EU level so as to make disclosure of empty voting feasible in the short time that is available between record date and AGM. The current Shareholder Rights Directive transposition in several EU Member States illustrates that harmonisation efforts could be important.

Should the decision be to prohibit empty voting, similar issues arise as the empty votes would need to be identified in a timely manner.

We are ready to participate in efforts by policy makers and the market participants to find an effective and efficient solution to empty voting.

Identification of shareholders by issuers

The Commission is well aware of the discussions taking place in the T2S task force on shareholder transparency and of the efforts undertaken by CSDs, intermediaries, issuers and their agents to find harmonised and cost effective operational processes that are specifically important in a cross-border environment. We are convinced that these market efforts would be far more effective and enforceable if they would be supported by an appropriate and harmonised EU legal framework on shareholder identification. As the Commission pointed out in Annex 11 to the Staff Working document of May 2009, there are national mechanisms in the UK and France but even these have their limitations in a cross-border context. Developing a EU legal framework supporting shareholder identification would overcome many of the current difficulties.



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We therefore regret that the Commission has not included this topic in the present consultation on the Transparency Directive, although we appreciate that this Directive may not be the most appropriate EU legal vehicle to address shareholder identification issues. We would like to urge the Commission to include this topic e.g. in the upcoming Securities Law Directive that will set out a regulatory regime for securities account providers, or in a possible revision of the Shareholders' Rights Directive.

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